

January 28, 2004

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Notice of Written Ex Parte Presentation
In the Matter of AT&T's Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt From Access Charges,
WC Docket Number 02-361

Dear Chairman Powell:

As leaders in the emerging Voice over Internet Protocol ("VoIP") industry, we believe that VoIP has great potential to deliver customer and economic benefits by delivering greater choices, lower costs, and innovative new services. We are writing to urge you and the Commission not to take any action that would prematurely define any class of VoIP as subject to access charges and to state our support for a more formal and holistic rulemaking concerning VoIP, where a thorough examination of all issues related to VoIP can be undertaken.

As you said so eloquently at the December 1st Commission hearing on VoIP, the goal is the "...empowerment of consumers and entrepreneurs. As one who believes unflinchingly in maintaining an Internet free from government regulation, I believe that IP-based services such as VOIP should evolve in a regulation-free zone."

As the Commission considers what steps to take now, we urge that it avoid singling out any class of VoIP as subject to legacy regulatory burdens. Such treatment is highly problematic, particularly at this stage in the Commission's deliberations. Such line drawing is inherently difficult and piecemeal efforts are guaranteed to cause confusion and prejudice the outcome of the rulemaking.

The application of the legacy access charge regime on any class of VoIP service would be unfair and counterproductive; unfair because the current regime for intercarrier compensation is universally regarded as needing reform and counterproductive because subjecting VoIP traffic to the current regime will undermine the intensive efforts underway to develop a consensus for reform of intercarrier compensation. We support the need for such a reform process, and as that is undertaken, the need to address how VoIP will be impacted. We believe that this should take place outside of the VoIP considerations and urge that such intercarrier compensation reform move quickly.

We believe that incumbent phone companies are already fully compensated for their costs. When a LEC terminates VoIP services on its network, the LEC receives either reciprocal compensation or local end-user business line rates. LECs are fully and fairly compensated, for example, when they receive end-user business line rates, as the Commission found in its ESP exemption order.

The development of so-called “phone-to-phone” VoIP plays an important role in the transition to broadband networks by leading to the deployment of infrastructure and gateways that are critical to the exchange of traffic between the Internet and legacy circuit-switched networks. It is extremely important that the FCC and the Congress not cripple VoIP at the very point that VoIP technology is beginning to bring the prospect of inexpensive communications to all. Networks capable of providing advanced IP services such as VoIP to both IP end points and “phone” end points are the taproot or foundation of all current and future VoIP applications and innovations. Phone to phone and other forms of VoIP being provided today are driving investment in IP networks, innovation in the laboratories, and a path forward to widespread benefits. Without these investments, and the innovation underway, current and future consumer and enterprise VoIP service offerings will not be able to scale to support large numbers of customers, and will remain technology novelties. If there is any Commission action to be taken now it should be putting a halt to the “self-help” actions that are becoming increasingly prevalent by incumbent LECs that are ignoring the Commission’s admonition in its 1998 *Report to Congress* that all forms of VoIP should be exempt from access charges until the Commission makes an affirmative decision to the contrary.

Rather than thwarting the early benefits that VoIP has to offer, the FCC and other policymakers should take the time to learn more about this exciting technology. The Commission should proceed with a formal VoIP rulemaking and acquire the full record upon which to make any decisions. It should also consider how VoIP affects several other pending FCC dockets, such as those which concern intercarrier compensation and universal service. But it simply is too risky to decide now, until the full VoIP proceeding is concluded and all issue fairly and publicly examined, that access charges apply to any form of VoIP. Nor is there a need now to impose access charges or otherwise revise carrier compensation applicable to VoIP, absent general inter-carrier compensation reform.

There are other issues that are also under consideration related to VoIP, including universal service; public safety, such as E911; law enforcement access; and accessibility. We are committed to working these issues within the industry and with the FCC and state regulators. We therefore do not believe that heavy regulation is needed to ensure that progressive and robust solutions are developed.

We agree with your stated intention of building the regulatory construct for VoIP from a clean slate, rather than selectively imposing pre-existing rules from common carrier regulations. Until such a comprehensive structure can be developed, regulatory burdens must be applied with extraordinary care. To do otherwise would expose this technology to unwarranted risks and disruptions at a critical juncture.

We the undersigned VoIP leaders believe the Commission should “stay the course” by proceeding with its pending VoIP rulemaking in a way that will produce a sound policy after deliberate consideration of all relevant factors and issues. Until then, the Commission should affirm that all forms of VoIP remain subject to the regulatory “exemption” that it has permitted since 1998, including an exemption from interstate access charges on call origination and termination. If the

Commission chooses to act now on the AT&T petition, it should affirm the exemption, clarify that access charges and other carrier compensation will not apply retroactively. If however the FCC is not prepared to grant the AT&T petition, these issues should be addressed in the context of the broader VoIP and inter-carrier compensation proceedings. Further, the Commission should instruct phone companies not to engage in “self-help” until the rulemaking is complete.

Sincerely,

AT&T

PingTone

Callipso

PointOne

Castel

Telic

ITXC

Transnexus, Inc

Nuera Communications

The VON Coalition

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein